# SINGAPORE REPORTS

## NAM WAH v. TAN MOH HUNG

[A.C.J. (Winslow J.) August 7, 1970]

[Singapore — District Court Civil Appeal No. 4 of 1970]

*Landlord and Tenant — Possession — Landlord reasonably requiring premises for own use — Alterations necessary before owner can use premises — Absence of evidence that planning permission for change of user and for alterations would be forthcoming — Control of Rent Ordinance (Cap. 242), s. 15 (j).*

In this case the landlord wished to use the building in question for a particular purpose which rendered it necessary that extensive alterations should be made to the premises. There was no evidence at all before the district judge that planning permission had been applied for or that it would be granted. The proposed use of the building also involved a change of user.

**Held:** (1) where a landlord had to make alterations to the building before he could use it himself, it would be necessary to adduce some evidence before the court that the planning permission would be available for the alterations;

(2) owing to some unsatisfactory features about the trial and with a view to help bring about a more realistic conclusion to the litigation between the parties the appeal would be allowed and a new trial ordered before another district judge.

*Case referred to:-*

(1) *Perak Hauliers Ltd.* v. *Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7.

DISTRICT COURT APPEAL.

*J. B. Jeyaretnam* for the appellant.

*S. K. Lee* (*Boey Kun Hong* with him) for the respondent.

**Winslow J.:** This appeal discloses some unsatisfactory features about the trial which impel me to adopt a course which I think should help to bring about a more realistic conclusion to the litigation between the parties. I would allow this appeal but order a new trial before another civil district judge.

The unsatisfactory features to which I have referred are, to mention only a few as follows: —

(i) The question of planning permission, permission from the Chief Building Surveyor and other relevant public authorities charged with approving plans for the reconstruction and use of premises such as those at present occupied by the tenant was never considered. The tenant/defendant, who is the appellant merely uses the ground floor of No. 213 Clemenceau Avenue as a store. The landlord/respondent who was the plaintiff in the court below requires this ground floor in order that he can accommodate customers' cars therein. At present it is an ordinary shop-house type of building. In order to accommodate cars considerable structural changes will have to be carried out. Moreover, the alternative accommodation on the 1st floor of the building in which the tenant now occupies the ground floor may also require some kind of permission to be used as a store. If I were to dismiss the appeal by the tenant a situation may well arise that after the eviction of the tenant from the premises, the various permissions to which I have referred may not all be obtained although I have received an assurance from the Bar that permission will almost certainly be granted. I cannot assume that such permission will in fact be granted. I did think at one time that I could even suspend the operation of the order until such permissions are obtained. I have, however, having regard to some of the unsatisfactory features which I am about to describe, decided that even that course would not be a fair one in all the circumstances.

(ii) Considerable argument was directed towards the learned district judge's approach to the burden of proof. After having decided that the plaintiff/landlord had discharged the onus on him that he reasonably requires the premises for his own use the district judge went on. quite correctly, to say that the burden then fell on the defendant to prove on a balance of probabilities that having regard to all the circumstances of the case including the question whether other accommodation was available for the plaintiff or the defendant greater hardship would be caused to him if an order for possession were made. So far so good. But at page 30 of the record in his written judgment, he states:

"But even looking at the position as it stands now I hold that the defendants have not discharged their burden to satisfy the court on a balance of probabilities that no other suitable alternative accommodation, merely for storing goods, is available or that their present premises cannot be better organised to contain anything more, and that in consequence they will suffer greater hardship if an order for possession is made."

He goes on then to state that this is a very important factor in determining greater hardship. In weighing the respective hardships the court had to consider whether the landlord himself had other alternative accommodation and also whether the tenant had. It would therefore help the landlord's case if he could try and show that other alternative accommodation was available to the tenant which the respondent in this case did by offering the 1st floor of the premises in question to the tenant. It would then help the tenant's case if he could show that the landlord has other accommodation. As a matter of evidence of course it would be open to both the landlord and the tenant to show that neither of them has been able to get suitable accommodation elsewhere. But there is no burden on them in this respect although, as a matter of evidence, if they chose to lead evidence of that kind there would be material on which the court could decide the question of greater hardship. It is therefore unfortunate that having stated the law correctly earlier in his written judgment the district judge proceeded to state that the defendant had not discharged his burden to satisfy the court that no other suitable alternative accommodation merely for storing goods was available. That was not strictly correct. (See *Perak Hauliers Ltd.* v. *Cycle & Carriage*[1]). If he had phrased that sentence in a different way

by saying *e.g.* "I am not satisfied on the evidence that no other suitable accommodation is available for the tenant" that might have helped. Unfortunately, he did not use words like these but stated baldly that there was a burden on the tenant to discharge to the satisfaction of the court that he had no other accommodation which he had not discharged.

(iii) The district judge went and viewed all the various sites and premises which had been mentioned in the evidence together with both counsel in the case before him. Unfortunately, he does not seem to have taken the time-honoured course of recording evidence of his visit through the mouth of a witness. There is conflict of evidence, for example, as to what the state of the premises at 187 Clemenceau Avenue was when the district judge visited it, when one considers the evidence of the defendant and his father as to the amount of space available at 187 Clemenceau Avenue. The son said that there were only 4 or 5 machines there whereas the father said that there were more than 10. In recording his observations or what he found at 187 Clemenceau Avenue no mention is made at all about the number of machines which the district judge saw. He merely concerned himself with the number of packages he saw strewn around rather haphazardly which led him to the conclusion that space could be created with better organisation. Unfortunately, there is no mention of how many machines there actually were present. There is again a hazy record in regard to the ground floor at 213 Clemenceau Avenue. Again, with regard to No. 8 Oldham Lane which it was stressed was a place which could be utilised for the landlord's business, here again there is a hazy note of what the district judge actually saw. The district judge seems to have accepted it as a fact that it would be impossible to combine the business of spray painting with upholstery business at 8 Oldham Lane which he found to be capable of accommodating at least 15 cars at a time. No consideration seems to have been paid to the question whether that large space could not have been partitioned in such a way as to prevent spray painting from interfering with the nature of the upholstery business.

These are a few of the unsatisfactory features about the trial of which I made mention so that they may be of some assistance to the district judge who will hear the case anew. I am not saying that the present district judge who heard the parties did not have material on which he could have reached the same conclusion as he did. But for the reasons I have stated earlier I am of the view that there should be a re-trial before another district judge. The appeal is accordingly allowed with costs subject to the order for a fresh trial.

*Appeal allowed, Retrial ordered.*

Solicitors: *J. B. Jeyaretnam & Co.; S. K. Lee & Co.*

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## MANAP BIN MAT v. GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Winslow JJ.)

January 18, 1971]

[Singapore — Civil Appeal No. 36 of 1970]

*Insurance — Motor insurance — Extended cover — Third-party risks — Disclaimer — Meaning of "insured" — Motor Vehicles (Third-Party Risks & Compensation) Ordinance, 1960, s. 4(3).*

This was an appeal from an order of the High Court, setting aside an interim award of two arbitrators who dismissed the plea that the arbitration proceedings were time barred under condition 8 of a motor insurance policy, since it had been commenced more than 12 months after disclaimer of liability by the respondents. The relevant portion of condition 8 reads as follows: "... If the corporation shall disclaim liability to the insured or any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

The claim arose out of a road accident on August 8, 1963. A private motor car No. SR7408 driven by one *ED* with the authority of *SB*, its owner and policy holder, collided with a motor lorry as a result of which *ED* and two passengers were killed. The appellant, claimant in the arbitration proceedings, was the administrator of the estate of *ED*. He claimed to be indemnified under the terms of the insurance policy issued by the respondents. However, as the deceased driver was not a party to the policy, the claimant relied on the provisions of section 4(3) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960.

The preliminary point for determination was that since the respondents had disclaimed liability to the policy holder for any claim under the policy, and since the claimant had not referred his claim to arbitration under the provisions of the policy, the claim was time barred under condition 8 of the policy.

**Held,** allowing the appeal: (1) in the insurance policy under consideration, there was not one contract of insurance only as there was one contract with the policy holder, and another contract with such person driving on the policy holder's order or with his permission;

(2) throughout the conditions of this policy of insurance, "insured" has to be read, so far as they can apply beyond the insured, as meaning "insured or any other person who is insured" by virtue of the relevant clause in the policy;

(3) accordingly, condition 8 in the policy would apply to such a person, not only to the extent that such a person would be bound to submit to arbitration but also, the words "shall disclaim liability to the insured" has to be read as meaning "shall disclaim liability to the insured or any other person who is insured" by virtue of the relevant clause in the policy.

*Case referred to:-*

(1) *Digby* v. *General Accident Fire and Life Assurance Corporation Ltd.* [1942] 2 All E.R. 319; [1943] A.C. 121.

COURT OF APPEAL.

*Denis Murphy* and *J. Dunbar* for the appellant.

*G. S. Hill* for the respondents.

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.** (delivering the judgment of the court): This is an appeal by the appellant from an order made by Chua J. dated the 21st day of August 1970 setting aside an interim award made by